

The Gazette



of India

EXTRAORDINARY
PART II—Section 3
PUBLISHED BY AUTHORITY

No. 198] NEW DELHI, WEDNESDAY, JULY 4, 1956

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 26th June 1956

S.R.O. 1525.—Whereas the election of Shri Mahendra Kumar Manav, son of Shri Brijlal Jain, 5, Civil Lines, Rewa, as a member of the Vindhya Pradesh Legislative Assembly from Laundi constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Matadin, son of Shri Halkoo Ram Chaurasia, resident of Maharajpur, District Chattarpur;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION TRIBUNAL VINDHYA PRADESH, REWA

ELECTION PETITION No. 13 OF 1955

Matadin Chaurasia—*Petitioner*

Versus

Mahendra Kumar 'Manav'—*Respondent*

This election petition has a chequered carrier and has therefore taken a longer time for its disposal. It was filed on 28th June, 1955 and referred to the Tribunal on 13th September, 1955. The written statement was filed by the respondent on 13th October, 1955. The list of further particulars was filed by the petitioner on 17th January, 1956. An additional reply on behalf of the respondent was also filed on 2nd February, 1956.

The petition contained allegations of both major and minor corrupt practices which were indulged in by the respondent in furtherance of his cause of election. The respondent in his written statement has equally emphatically denied all these allegations and has stated that all the allegations are false and without any foundation.

The election in question was a bye-election of the Laundi Assembly Constituency and was held on 17th April, 1955. The date for filing the nomination paper was 11th March, 1955 and the nomination papers were accepted on the 14th March, 1955.

The election as stated above was held on 17th April, 1955. The result of the said election was declared on 19th April, 1955 and Mr. Mahendra Kumar Manav

was declared to have been duly elected as he secured 12100 votes as against 6435 votes which were polled by the petitioner, Mr. Matadin Chaurasia. The result of the election was notified in the Vindhya Pradesh State Gazette on 23rd April, 1955. The notification regarding the notice of date of the filing of the Return of election expenses and the accompanying declaration of the respondent was made under rule 113 of the Representation of the People Rules 1951 in the Vindhya Pradesh State Gazette dated 11th June, 1955.

This petition has been filed challenging the validity of the election of the respondent from the Laundi Assembly constituency, held on 17th April, 1955.

Having regard to the allegations of corrupt and illegal practices in the petition and the points of controversy between the parties the following issues had been framed:—

- (1) Is the petition barred by time?
- (2) Is the petition liable to be dismissed for non-joinder of necessary parties?
- (3) Whether in view of the fact that the second list of particulars was filed beyond the period of limitation and the original petition having been filed without a proper list, the allegation of corrupt practices could be enquired into?
- (4) Whether having regard to the fact that the list of illegal and corrupt practices attached with the petition originally were not verified, the allegations contained in them could not be put to trials?
- (5) Is para (1) (i and j) of the list of particulars liable to be struck off in as much as it does not relate to any allegation in the petition?
- (6) Is Buddha Singh a headman and a zamindar of Dumra, and does the fact of his seconding the nomination paper of the Respondent amount to assistance for election?
If so, what is the effect?
- (7) Did Param Lal, School teacher of Kusma, along with Bhagirath Sharma, Vasudeo Purohit, Baijnath Nayak, Pt. Ram Dayal and Lala Ram Bajpai openly canvass for the congress in the school premises and village of Kusma, between 1st April 1955 and 17th April, 1955?
If so, what is the effect?
- (8) Did Vasudeo Purohit, zamindar of Kusma openly canvass for the Respondent from 5th April to the date of polling in villages Kusma, Nalgawan and Sudara?
If so, what is the effect?
- (9) Did respondent himself, through his agents, workers and supporters (mentioned in the further list of particulars) obtain the assistance of Kalu Ram, alias Kalu of Garhi, Shri Prasad Arjariya of Jhinna and Buddha Singh of Dumra, who are headmen?
If so, what is the effect?
- (10) Did respondent, along with Shri Lala Ram, Shri Harnarayan Khare and Shri Raghvans Misra threaten the voters not to vote nor to canvass for the petitioner at Georaha and Pipari on 9th April, 1955 and at Laundi on 19th April, 1955, and if so, what is the effect?
- (11) Did the Respondent, through Shri Harnarayan Khare, Deputy Collector, Raghvans Misra, Naib Tahsildar, Laundi, threaten voters at villages Ujra, Maharajpur, Tatam, Laundi between 9th and 15th April 1955?
If so, what is the effect?
- (12) Did the respondent along with Bhagirath Sharma bribe Bhaya Lal and Kamla voters at Nalgawan on 17th April, 1955 and Dilla and Harijanwa Chamar at Maharajpur?
If so, what is the effect?
- (13) Did respondent and Bhagirath Sharma bribe Bhavalal and Kamta of Nalgawan and Mathura of Kusma to vote for Congress and provided them with conveyance?
If so, what is the effect?
- (14) Did Lala Ram and Shri Lakshmi Prasad Gupta threaten Kamalpat Nayak of Maharajpur to compel him to vote for the Congress?
If so, what is the effect?
- (15) Did Shri Lala Ram Bajpai and Shri Harnarayan threaten the voters at Tatam and Kusma on 12th and 13th April, 1955?
If so, what is the effect?

- (16) Is the Return of Election expenses filed by the Respondent false in material particulars as given in clause (n) sub-clause (a) to (g) of the list of particulars?
If so, what is the effect?
- (17) Whether a sum of Rs. 50,000 out of the Government money was distributed in different villages for development work a fortnight before the polls though the money had been sanctioned long before the polls and had been purposely kept in abeyance for deriving election utility and support for the Congress candidate, the respondent?
If so, what is the effect?
- (18) Whether, Shri Shambhunath Shukla, Oanbahadur Singh and Lala Ram Bajpai, Ministers, the supporters of the respondent used Government cars for the election of the respondent and if so has this expense been shown in the return of the election expenses?
If so, what is the effect?
- (19) Was the nomination paper No. 1 of the respondent improperly accepted by the Returning Officer and has this fact materially affected the result of the election?
- (20) Did the publication of the list of validly nominated candidates in the *Vindhyachal* newspaper dated 15th April, 1955 has an adverse effect on the free exercise of votes?
If so, what is the effect?
- (21) Did Manki and Bhagwandass obtain ballot papers with the connivance of Respondent in the names of voters Nos. 1143 and 1148 and thus personated voters for Mahobawal Halki and Budhu Rajju voters?
If so, what is the effect?
- (22) Were votes cast in place of dead voters (mentioned in the clause (r) of the list of corrupt practices) with the connivance of the Respondent?
If so, what is the effect?
- (23) To what relief, if any is the petitioner entitled?

The petitioner produced 3 witnesses, Jageshwar Prasad, Bhagwat Prasad and Arjun Singh and after that he filed a petition for withdrawal of the election petition to which a reply was filed by the respondent. In connection with this application for withdrawal for the election petition both the petitioner and the respondent have been examined on oath. For reasons given in our order dated 5th May, 1956 the application for withdrawal of the election petition was dismissed with costs.

After the dismissal of the petition for the withdrawal of the election petition both the parties were served with notices to produce their evidence as the election petition was going to be decided on merits.

In spite of the service of the notice on the petitioner and his counsel the petitioner has not appeared before us nor has he produced any evidence. The respondent has appeared and has produced evidence.

As has been observed by their Lordships of the Supreme Court in a case reported in A. I. R. 1954 S. C. page 202 that "It is essential that Election Tribunals should do their work in full. They are *ad-hoc* bodies to which remands cannot easily be made as in ordinary Courts of Law. Their duty does not end by declaring an election to be void or not. Where a number of allegations are made in a petition about corrupt and illegal practices, undue influence and bribery it is the duty of the Tribunal not only to enquire into these allegations, but also to complete the enquiry by recording findings about these allegations and either condemn or clear the candidate of the charges made." The facts of the present case are very similar to the facts of the case cited above, especially as regards the allegations of corruption, undue influence and bribery and therefore we decided to go into a full enquiry about the allegations made in the petition and to record the findings thereon.

The result of the non-appearance of the petitioner and his witnesses is that we are left with only 3 witnesses which were produced by the petitioner in support of the allegations in his petition before the application of withdrawal was filed by him. Out of these one witness, Arjun Singh, P.W. 3, was only a formal witness. The respondent has examined himself and has produced 5 witnesses. We shall

deal with the evidence of these witnesses when we are dealing with the various issues to which the evidence relates.

As has already been observed the various allegations made in the petition and the points in controversy between the parties have been formulated in the issues which have been framed in this case and therefore we are taking for decision all the issues one by one separately.

Issue No. (1).—The contention of the respondent in regard to this issue was that the petition was barred by time, admittedly the petition was presented on 28th June, 1955 while according to the election law it should have been presented by the 25th June, 1955. According to section 8 of the representation of the People Act 1951 the petition could have been presented within the period of limitation prescribed. Now under rule 119 of Representation of the People Rules, 1951, the period of limitation prescribed for filing election petition is 14 days from the date of the publication of the notice in the official Gazette for the Return of election expenses of such candidate and declaration made in respect thereof have been lodged with the Returning Officer under rule 113 of the Representation of the People Act 1951. The date of notification in the State Gazette is 11th June, 1955 and so admittedly the petition when presented was barred by time. In this case an application for the condonation of the delay in presenting the election petition was filed before the Election Commission India and the Election Commission *vide* its order dated 22nd August 1955 has extended the period of limitation and has condoned the delay. The question now is whether it is open to the Tribunal to go into this question again after the decision of the point by the Election Commission. In our view the matter is concluded by the decision of the Supreme Court reported in A. I. R. 1954 S.C. 411 in which their Lordships of the Supreme Court have held that the decision of the Election Commission on the question of limitation is final and not open to question at any later stage of the proceedings. We therefore hold that it is not open to us to go into the question and the decision of the Election Commission must be treated to be final and we accordingly hold that the petition is not barred by time.

Issue No. (2).—It has been contended by the counsel for the respondent with regard to this issue that the petition is liable to be dismissed because of the non-joinder of the necessary parties and his contention is that since four other candidates, Srimati Vidayavati and Sarvashri Deen Dayal, Ram Singh and Ram Sawaroop who were duly nominated candidates to the election, though they had withdrawn their candidature, are necessary parties and they not having been made parties to this petition, the petition is defective and should be dismissed. Because according to section 82 Representation of People Act all the candidates who have been duly nominated should be joined as respondents to the petition. This contention appears to have no force as the matter again is concluded by an authority of the Supreme Court in a case reported in A.I.R. 1954 S.C. at page 210 where their Lordships say, "Non-compliance with the provisions of the law relating to the impleading of the parties, *viz.*, section 82, is not necessarily fatal and can be cured. It is for the Tribunal to determine the matter as and when it arises in accordance with the provisions of the Civil Procedure Code which have been made expressly applicable. Section 90(1) indicates that array of parties as provided by section 82 is not final and conclusive and the defects can be cured. Provisions of section 110, 115 and 116 of chapter 4 of part 6 also support this view. These provisions suggest that if no proper party is made from the list of respondents, such a defect is not fatal and the Tribunal is entitled to deal with it under the provisions of the Civil Procedure Code, order 1, rules 9, 10 and 13." According to this view the Tribunal can determine the omission of necessary parties as and when the question arises during the course of the proceedings. This occasion has never arisen in this case as no one has appeared before us for being made a party to this petition and therefore we over-rule this objection and hold that the petition is not liable to be dismissed on this ground.

Issue No. (3).—For the reasons given as the basis of our findings on issue No. 1 we hold that the second list of particulars was properly admitted and hence the corrupt practices mentioned therein could be enquired into.

Issue No. (4).—The plea contained in this issue has been already decided by the Election Commission *vide* its order, dated 22nd August, 1955.

Issue No. (5).—The matter raised in this issue has already been decided by us by our order, dated the 4th February 1956 by which we directed that paras. (1), (j) of the list of particulars should be deleted.

Issue No. (6).—The plea raised in this issue is that Buddha Singh was a headman and a zamindar of Dumra and he having seconded the nomination paper of the respondent, the nomination is illegal. In para. 3 of the written statement it has been stated that Buddha Singh is neither a zamindar nor a headman. There is no evidence on behalf of the petitioner to show that Buddha Singh was either a zamindar or headman. Petitioner's own witness, Jageshwar Prasad, has proved by the register which was produced by him before us that Buddha Singh is neither a zamindar nor a headman. Buddha Singh has been produced by the respondent and he has stated that he has never been a zamindar within the last seven generations. Over and above that there is the statement of respondent himself on page 1 line 6 of his statement that Buddha Singh was neither a zamindar nor a headman. Having regard to this state of evidence we hold that it has not been proved that Buddha Singh was either a zamindar or a headman of the village. In view of these findings, it is not necessary to find further as to whether or not he seconded more than one nomination papers of the respondent as it will have no effect. Further even if it be assumed for the sake of the argument that Buddha Singh was a Government servant the nomination paper will not be illegal or improper because a Government servant has a right to do so under the provisions of section 33 of clause (2) unless the Government servant is further disqualified under section 16 of the Act of 1950. Government servant as such is not disqualified under section 16 of the Act of 1950 as he does not come under any of the clauses (a), (b), (c) of section 16 of 1950 Act and so a Government servant is entitled to nominate or second a candidate for election. Section 123(8) does not take away from the Government servant the right expressly given to him under section 33(2) unless it is further shown that this has amounted to an assistance for the furtherance of the prospects of the candidate's election. We are supported in this view by a decision of their Lordships of the Supreme Court reported in A.I.R. 1954 S.C. page 202 in which their Lordships observed as follows:—

“An election of a member to State Legislative Assembly is not invalidated merely because the member's nomination was either proposed or seconded or both, by Government servant or servants. Section 33(2) is general and confers privilege of proposing or seconding a candidate for election on every person who is registered in the electoral roll provided he is not disqualified under section 16 of the Act of 1950. That section excludes 3 classes of persons but not Government servants unless of course they fall under any one of these classes. Therefore so far as section 33 is concerned a Government servant is entitled to nominate or second a candidate for election unless he happens to fall under one of the 3 excluded categories. Section 123(8) does not take away from the Government servants the right expressly given to them under section 33(2). The policy of the law is to keep Government servants aloof from politics and also to protect them from being imposed on by those with influence or in positions of authority and power to prevent the machinery of Government from being used in furtherance of a candidate's return. But at the same time it is not the policy of the law to disfranchise them or to denude them altogether of their rights as ordinary citizens of the land. But if the procurement of the Government servants to propose and second a nomination is part of a plan to procure their assistance for the furtherance of the candidates prospects in other ways than by vote, then the provisions of section 123(8) are attracted, for in that case, the plan and its fulfilment must be viewed as a connected whole and the acts of proposing or seconding which are innocent in themselves, cannot be separated from the rest.”

In this case there is not an iota of evidence to show that Buddha Singh did any thing which amounted to an assistance towards the furtherance of the prospects of candidate's election. Therefore in either view this plea has no force and is therefore rejected.

Issue No. (7).—points raised in this issue is not supported by any evidence on behalf of the petitioner. It is denied by the respondent in his statement at various places. There is no reason to disbelieve the respondent. We are therefore satisfied that it has not been proved that Param Lal, a school teacher of Kusma, along with Bhagirath Sharma and others canvassed for the Congress' candidate in the school premises of Kusma.

Issue No. (8).—As regards this issue it is said that Vasudeo Purohit was a zamindar of Kusma and he openly canvassed for the respondent's election. Even

Jageshwar Prasad, a witness, of the petitioner has proved by producing the register that Vasudeo Purohit is not a zamindar. Vasudeo Purohit has himself been examined in this case by the respondent and he has stated that he was never a zamindar but was only a karkun of Must. Jagarani, the zamindar, who died in 1951 and since then he had stopped the work of karkun also. Shri Vasudeo Purohit acted as a karkun till 1951, and after the death of Must. Jagarani he did not act even as a karkun on behalf of Must. Jagarani. It is therefore absolutely baseless to say that he was a zamindar and we hold accordingly.

Issue No. (9).—As regards this issue it is alleged by the petitioner that the respondent obtained the assistance of Kaluram alias Kalu of Garhi, Shri Prasad Arjariya of Jhinna and Buddha Singh of Dumra who were headmen. So far as the case of Buddha Singh is concerned it has already been held above that he is neither a zamindar nor a headman. So far as Kaluram is concerned the petitioner's own witness, Jageshwar Prasad, has stated in his statement that the name of Kaluram alias Kalu does not appear in the list of zamindars. The respondent has denied in his statement that Kaluram was a zamindar. So far as Shri Prasad Arjariya of Jhinna is concerned there is no evidence on behalf of the petitioner to show that he is a zamindar. The respondent's witness No. 4, Hira Lal, has stated in his statement that the name of Shri Prasad Arjaria does not appear in the list of zamindars and there is no mukhiya in that village. The respondent himself has stated in the last line of first paragraph of his statement that Shri Prasad Arjaria is not a zamindar. In view of this evidence we hold that neither Kaluram of Garhi nor Shri Prasad Arjariya of Jhinna nor Buddha Singh of Dumra are zamindars or headmen.

Issue No. (10).—As regards this issue it has been alleged by the petitioner that respondent along with Shri Lala Ram, Shri Harnarayan Khare and Shri Raghubans Mishra threatened the voters not to vote for the petitioner at Georaha and Pipari on 9th April, 1955 and at Laundi on 15th April, 1955. There is no evidence on behalf of the petitioner to support this fact. The respondent has stated in para. 4 of page 6 of his statement that he never threatened any of the voters. There is no reason to disbelieve the statement of the respondent on the point and we therefore hold that it has not been proved that the respondent threatened voters with the help of Messrs. Raghubans Mishra, Harnarayan Khare and Lala Ram Bajpai.

Issue No. (11).—As regards this issue it is alleged by the petitioner that the respondent through Shri Harnarayan Khare, Deputy Collector and Shri Raghubans Mishra, Naib Tahsildar, Laundi, threatened voters at village Ujra, Maharajpur, Tatam, Laundi between 9th April and 15th April, 1955. This is emphatically denied by the respondent in his written statement. There is no evidence on behalf of the petitioner to support this fact. On the other hand the respondent has denied this in his statement in para. 3 of page 2 of his statement and is supported by a witness Hira Lal (R.W. 4). We believe the evidence of the respondent and Hira Lal both on this point and hold that this fact is not proved.

Issue No. (12).—As regards this issue the allegation of the petitioner is that the respondent along with Bhagirath Sharma bribed Bhaiyalal and Kamla voters at Naigawan on 17th April, 1955 and Dilla and Harjanwa Chamar of Maharajpur. There is no evidence on behalf of the petitioner to support this allegation. This is denied on page 5 of his statement by the respondent. We have no hesitation in holding that this allegation is absolutely baseless and incorrect.

Issue No. (13).—As regards this issue it is alleged by the petitioner that the respondent and Bhagirath Sharma bribed Bhaiyalal and Kamta of Naigawan and Mathura of Kusma to vote for the Congress and provided them with conveyance. There is no evidence on behalf of the petitioner to support this allegation. On the other hand the respondent has denied this on page 5 of his statement. We accordingly relying on this evidence, hold that there is no truth in this allegation and it is proved to be false.

Issue No. (14).—As regards this issue it is alleged by the petitioner that Shri Lalaram, Shri Laxmi Prasad Gupta threatened Kamlapati Nayak at Maharajpur to compel him to vote for the Congress. Again there is no evidence on behalf of the petitioner to support this plea. It is denied by the respondent in his statement on page 5. Relying on the statement of the respondent on the point we hold that this allegation is incorrect and without any foundation.

Issue No. (15).—As regards this issue it is alleged that Shri Lalaram Bajpai and Shri Harnarayan threatened voters at Tatam and Kusma on 12/13th April, 1955. There is no evidence on behalf of the petitioner to support this allegation.

It is denied by the respondent on page 5 of his statement. There is no reason to disbelieve the respondent on the point and we accordingly hold that this plea has no force and must be rejected.

Issue No. (16).—As regards this issue it has been alleged by the petitioner that the return of the election expenses which has been filed by the respondent is false in material particulars as given in clause (N) and sub-clauses (a) to (g) of the list of particulars. No evidence has been produced on behalf of the petitioner to prove this allegation. The respondent, in his statement, has denied that the return of election expenses is false. In regard to sub-clause (a) there is evidence on the record; so far as sub-clause (b) is concerned only Rs. 33/10/- were spent and it is incorrect to say that Rs. 250 were spent. The sum of Rs. 33/10/- has been shown in the return of expenses. So far as sub-clause (c) is concerned the respondent maintained two messes for supply of food to his workers and this expenditure has also been shown in his return of expenses. The cost of petrol of a truck in which his workers came has also been shown in the return of expenses. So far as sub-clause (d) is concerned Rs. 30 was spent as cost of petrol for the car of Shri Pratap Singh and Rs. 46/10/- as cost of petrol and mobiloil for the car used by Shri Narendra Singh which have been shown in the return of expenses. So far as sub-clause (e) is concerned the District Congress Committee did not spend any money but only made certain advertisements, the cost of which was paid by the respondent directly to the persons concerned. The cost of the printing of pamphlets has been paid by the respondent. So far as sub-clause (f) is concerned Rs. 15 were given to Sushma Press Satna and Rs. 99 to Jagaran Press, Rewa and Rs. 250/12/- to Vindhychal Press, Chhatarpur vide page 4 of the statement of the respondent and all these have been shown in the return of election expenses filed by the respondent. So far as sub-clause (g) is concerned it is denied by the respondent in his statement at page 4 that he got any advertisement published in the daily Jagaran and Vindhychal.

So far as the legal position is concerned it is a minor corrupt practice and even if it be proved that the return of election expenses is false no election can be set aside on that ground alone unless it is further proved that this has materially affected the result of the election, *vide*, A.I.R. 1954 S.C. page 513.

We therefore hold that it has not been proved that the return of election expenses filed by the respondent is false in material particulars.

Issue No. (17).—As regards this issue the allegation of the petitioner is that a sum of Rs. 50,000 out of Government money had been kept in abeyance and was distributed in different villages for the development work a fortnight before the election to support the candidature of the respondent. There is no evidence on behalf of the petitioner to prove this allegation. It is denied by the respondent on pages 2 to 3 of his statement. We believe the statement of the respondent and hold that this allegation is unfounded.

Issue No. (18).—As regards this issue the allegation of the petitioner is that Shri Shambhoo Nath Shukla, Shri Danbahadur Singh and Shri Lalaram Bajpai, the supporters of the respondent, used Government cars for furtherance of the election of the respondent and their expenses have not been shown in the return of the election expenses. There is no evidence on behalf of the petitioner to support this plea. The respondent in his statement at page 3 denies this. He has stated that the entire area was divided between these persons and as the total distance was 21 miles only the cost of the petrol was not very much, and has stated that the actual cost of petrol etc. has been correctly shown in the return and we hold accordingly.

Issue No (19).—The allegation of the petitioner with regard to this issue was that the nomination paper No. 1 (Ex. C/1) of the respondent was improperly accepted by the Returning Officer and this improper acceptance has materially affected the result of the election. The Petitioner has not produced any evidence to show as to how the nomination paper No. Ex. C/1 was improperly accepted by the Returning Officer. Since this point was raised in the petition we summoned the file of the nomination papers of the bye-election of the Laundi Assembly Constituency from the District Magistrate, Chhatarpur. Shri Jagat Kishore Khare, the Election clerk, Collectorate, Chhatarpur, has appeared before us and has produced the file containing nomination papers of the bye-election of Laundi Assembly Constituency. On a perusal of the nomination papers we find that three nomination papers were filed on behalf of the respondent in the said bye-election. In the nomination paper Ex. C/1 the name of the proposer is Baburam and the name of the seconder is Buddha Singh. In the second nomination paper Ex. C/2 the name of the proposer is Ram Singh and the name of seconder is

Chaturesh. In the third nomination paper Ex. C/3 the name of proposer again is Baburam and the name of seconder is Buddha Singh. So it appears that two nomination papers were subscribed by Baburam and Buddha Singh as proposer and seconder respectively. Admittedly there was one vacancy and so the proposing and seconding of two nomination papers by the same set of persons contravened the provisions of sub-clause 2 of section 33 of the Representation of People Act 1951 because the relevant portion of the section reads like this, "Any person whose name is registered in the electoral roll of the constituency and who is not subject to any disqualification mentioned in section 16 of the Representation of People Act, 1950 may subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled but no more," and therefore it is obvious that Baburam and Buddha Singh could not subscribe two nomination papers as proposer and seconder for one vacancy. The question therefore is whether this fact of two nomination papers having been subscribed by the same set of persons will render invalid both the nomination papers. It has been argued by the counsel for the respondent that the nomination paper Ex. C/1 was perfectly valid as it was properly done inasmuch as all the requirements as laid down in section 33 were complied with. And according to the provisions of sub-clause (b) of clause 7 of section 36 of the Representation of People Act only one nomination paper will be deemed to be valid as there was only one vacancy. The mere fact that another nomination paper was subscribed as proposer and seconder by the same set of persons who subscribed the first nomination paper as proposer and seconder may or may not render the second nomination paper invalid but this will have no effect on the first nomination paper which was proper and fulfilled all the requirements necessary under the law. Further assuming for the sake of argument that the nomination paper number one was invalid even then it will not be a ground for setting aside the election unless it was further proved that the result of the election has been materially affected by the improper acceptance of the nomination paper *vide* section 100 clause 1 sub-clause (c) and on this point he has cited a Supreme Court case reported in A.I.R. 1955 S.C. page 233 and so his argument is that in the first place the nomination paper was properly accepted and secondly even if it was improperly accepted the election cannot be set aside unless it was further proved that the result of the election had been materially affected by this improper acceptance of the nomination paper. We are inclined to agree with this contention because we find that the first nomination paper Ex. C/1 was in order as it fulfilled all the requirements of Section 33. Further even if the same set of persons had subscribed another nomination paper filed on behalf of the respondent it will not affect the validity of the first nomination paper. Section 36 sub-clause (b) of clause 7 reads like this, "Where a person has subscribed, whether as proposer or seconder, a large number of nomination papers than there are vacancies to be filled those of the papers so subscribed which have been first received up to the number of vacancies to be filled shall be deemed to be valid." According to this provision the first nomination paper must be held to be valid. In so far as the second nomination paper which was subscribed by same persons as proposer and seconder who subscribed the first nomination paper is concerned it must be deemed to be invalid having regard to the provisions of Section 33 sub-clause (2). The use of the words "no more" in sub-clause (2) is merely directory and not mandatory. As has been observed by their Lordships of the Supreme Court in a case reported in A.I.R. 1954 S.C. 210, "That a provision of a statute is not mandatory unless the non-compliance with it is made penal," and since prohibition of not subscribing more nomination papers than the number of vacancies has not been made penal in the Representation of People Act it must be considered to be only directory and it will not therefore render the first nomination paper invalid even if there was some flaw in the subsequent nomination paper, because the provisions of sub-clause (b) of clause (7) of Section 36 makes it absolutely clear that the nomination papers which have been first received up to the number of vacancies to be filled shall be deemed to be valid and do not go further to say that the first received nomination paper also will become invalid if the number of nomination papers filed on behalf of one candidate exceeds the number of vacancies to be filled. In the present case the nomination paper Ex. C/1 bears serial No. 1 signed and certified by the Returning Officer and further in his order, dated 14th March, 1955 he has stated that nomination paper Ex. C/1 was taken up first and was accepted and therefore he did not consider it necessary to consider the other two nomination papers at serial Nos. 2 and 3. Therefore it is evident that nomination paper Ex. C/1 was presented and examined by the Returning Officer first in order of time and since it was proper in form it was accepted. In our view the nomination paper of the respondent was properly accepted. As has been laid down by their Lordships of Supreme Court in a case reported in A.I.R. 1954 S.C. 513 the mere fact of improper acceptance of the nomination paper will not render the election invalid unless it is further proved that the result of

the election has been materially affected by this improper acceptance of the nomination paper. As their Lordships say in a case reported in A.I.R. 1955 S.C. 233 that, "Section 100(7)(c) requires that before an order setting aside an election can be made two conditions must be satisfied; it must really be so that there has been improper reception or refusal of a vote or reception of any vote which is void, or non-compliance with the provisions of Constitution or the Representation of People Act, 1951 or any rules or orders made under that Act or of any other Act or rules relating to the election or any mistake in the use of the prescribed form. It must further be shown that as a consequence thereof the result of the election has been materially affected. The two conditions are cumulative, and must both be established. The burden of establishing them is on the person who seeks to have the election set aside. Therefore the burden of proving that the result of the election has been materially affected is on the petitioner who is challenging the validity of the election. There is not an iota of evidence on behalf of the petitioner to show this much less discharging the burden of proof which lay on him under the law that the result of the election has been materially affected by the improper acceptance of the nomination paper if any. We therefore hold that in the first place the nomination paper was not improperly accepted and even assuming if it was improperly accepted the election cannot be set aside as it has not been proved that the result of the election has been materially affected by this.

Another objection has been taken by the petitioner that since at the time of the nomination the electoral roll of 1953 was used and the election was held on the basis of the electoral roll of 1954 the election is invalid. Again there is no evidence on behalf of the petitioner to show this. The respondent has explained the whole position on page 3, para. 2 of his statement that at the time of the nomination the electoral rolls of 1953 plus the list of the amendments of 1954 were before the Returning Officer when the nomination papers were presented and accepted and he is supported there by the statement of Shri Gauri Prasad Deputy Secretary (Judicial) and Deputy Chief Electoral Officer, Rewa. He was working as Chief Electoral Officer, Vindhya Pradesh at that time because Shri Khare who was the Chief Electoral Officer was absent. He supports the statement of the respondent on the point and has stated in his statement that "On the date of the nomination the Returning Officer had before him the voters' list of 1953 as well as the amendments of 1954. So far as I am aware these amendments were known to the electorate So far as I remember the Returning Officer had before him both the lists at the time of scrutiny. This information was reliable as I made enquiry personally." There is no reason to disbelieve the statement of Shri Gauri Prasad who is a responsible Government Officer. We therefore relying on the statement of Shri Gauri Prasad and the respondent hold that at the time of the nomination the Returning Officer had before him the electoral roll of 1953 and amendments of 1954. It may be argued that since the whole list consisting of 1953 electoral rolls and amendments of 1954 were not republished before the nomination papers were filed, the election was bad as the election was held on the basis of the republished list. To us it appears to be merely a technical objection as in point of fact the corrected up-to-date list was before the Returning Officer at the time of filing of the nomination papers. Even if there has been some non-compliance with provisions of the Act or rules in this connection, in the absence of proof of that result of the election has been materially affected by such contravention the election cannot be set aside and therefore this plea has no force and we hold accordingly.

Issue No. (20).—As regards this issue the allegation of the petitioner is that the list of validly nominated candidates was published in the Vindhyaachal newspaper, dated the 15th April, 1955 which amounted to an interference with the right of free exercise of the vote. No evidence has been produced on behalf of the petitioner to prove this allegation. It is denied by the respondent on page 4 of his statement. Even if it be assumed that the republication had some effect it will not be of any use unless it is further proved that this has materially affected the result of election. There is no such evidence in this case. We therefore hold that this allegation is incorrect.

Issue No. (21).—As regards this issue, the allegation in the petition is that Manki and Bhagwandas obtained the ballot papers with the connivance of the respondent in the names of voters. No. 1143, 1148 and thus personated for Mahobawali Halki and Budhurajju voters. There is no evidence on behalf of the petitioner to support this allegation. This is emphatically denied by the respondent at page 5 of his statement and he has further explained the position at page 4 of his statement where he says, "No voter personated for another with the connivance of myself or my agents. The fact is that at Laundi 'B' polling station two persons came to cast their votes and gave their serial Nos. as 1143

and 1148. This was detected by my polling agent who challenged their right to vote and lodged a complaint along with a deposit of Rs. 20. The only persons who opposed me at Lauudi were barais who are also called chaurasias. They are the caste fellows of the petitioner. Manki and Bhagwandas who attempted to vote in this manner are barais. Bhagwandas is a friend of the petitioner and further he was convicted in a case of homicide for 12 years R.I." We believe the statement of the respondent on the point and hold that there is no force in this plea and it is therefore rejected.

Issue No. (22).—As regards this issue the allegation in the petition is that votes were cast in place of dead voters as mentioned in clause (r) of the list of corrupt practices with the connivance of the respondent. There is no evidence on behalf of the petitioner in support of this allegation. The respondent has denied this allegation on page 5 of his statement wherein he has stated that no persons voted in place of dead voters with the connivance of himself or his agents, and has further explained the position on page 7, last paragraph of his statement wherein he has stated, "Out of the persons mentioned in para. 9 of the further particulars put in by the petitioner Nos. 943, 948 and 994 in the electoral roll did not contain the names given in the further particulars. On the other hand the names are as follows: 943—Tulsidas Dasrath, 948—Fadali Bhagole, 994—Ganesh Ballu. I cannot say if the other 9 voters mentioned in this para. are dead or any one voted in that village. None of my agents nor myself got any one to vote in place of dead voters." There is no reason to disbelieve the statement of respondent on these points and we hold that this allegation is without foundation.

Issue No. (23).—In view of the above findings the petitioner is not entitled to any relief.

Before we finally part with the case we must record our feeling of appreciation for the assistance which we received from Mr. Harish Kumar Shrivastava, the counsel for the respondent, who had prepared the case with great care and attention and has placed before us all the relevant law on the points involved in the case.

In the result we see no force in this election petition and we accordingly dismiss it with costs. Having regard to the very grave nature of the charges made by petitioner in his petition against the respondent which were repeated in the statement of the petitioner at the time when he filed an application for the withdrawal of the election petition which have now been found to be without foundation, we consider it desirable that heavy costs should be awarded in this case. We therefore order that the petitioner do pay to the respondent a sum of Rs. 450 (Rupees four hundred fifty) as costs.

(Sd.) DURGA PRASAD, *Chairman.*

June 15, 1956.

(Sd.) E. A. N. MUKARJI, *Member.*

(Sd.) LAKSHMI SARAN, *Member.*

[No. 82/13/55/18416.]

By Order,

A. KRISHNASWAMY AIYANGAR, *Secy.*